

Joel B. Robbins, Esq. (011065)
Anne E. Findling, Esq. (010871)
ROBBINS & CURTIN, p.l.l.c.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Tel: 602/285-0100
Fax: 602/265-0267
joel@robbinsandcurtin.com
anne@robbinsandcurtin.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**(1) Noah Frochtz wajg, an
individual,**

Plaintiff,

vs.

**(2) City Of Tempe, Arizona, a
municipality;
(3) Sergeant Michael Hayes
(Badge No. 13103), in his official and
individual capacity as an officer with
the Tempe Police Department;
(4) Officer Felipe Amezquita
(Badge No. 11738), in his official and
individual capacity as an officer with
the Tempe Police Department;
(5) Officer Jake Alexander (Badge
No. 19837), in his official and
individual capacity as an officer with
the Tempe Police Department;
(6) Officer Bryan Berman (Badge
No. 20184), in his official and
individual capacity as an officer with
the Tempe Police Department;
(7) Officer Matthew Barker (Badge
No. 20283), in his official and**

No. _____

COMPLAINT

Jury trial demanded

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

individual capacity as an officer with the Tempe Police Department;
(8) Officer Nolan Palmer (Badge No. 19842), in his official and individual capacity as an officer with the Tempe Police Department;
(9) Officer Kyle Pettengell (Badge No. 20942), in his official and individual capacity as an officer with the Tempe Police Department;
(10) Officer Lauren Wallace (Badge No. 19628), in her official and individual capacity as an officer with the Tempe Police Department; and
(11) Sergeant Michael Evans (Badge No. 11813), in his official and individual capacity as an officer with the Tempe Police Department.

Defendants.

For his Complaint against Defendants, Plaintiff Noah Frochtzwajg alleges as follows:

1. Plaintiff Noah Frochtzwajg is resident of Maricopa County, State of Arizona.

2. Defendant City of Tempe, Arizona, is a municipality organized under the laws of the State of Arizona. The Tempe Police Department is a subdivision or department of Defendant City of Tempe.

3. For purposes of Plaintiff's state law claims against Defendants, Defendant City of Tempe, Arizona, is vicariously responsible for the conduct of its employees pursuant to the doctrine of *respondeat superior*.

1 4. Plaintiff does not assert that Defendant City of Tempe is
2 vicariously liable for its employees' federally unconstitutional conduct under
3 *respondeat superior*.
4

5 5. Defendant Michael Hayes was, at all times relevant to the present
6 matter, a police officer with the Tempe Police Department. He is named
7 herein in both his official and individual capacities, as such terms are used
8 within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
9

10 6. At all times relevant to the present matter, Defendant Hayes was
11 acting within the scope and course of his employment as a Tempe police
12 officer. He was a state actor as that term is used within the Civil Rights Act of
13 1871, 42 U.S.C. § 1983.
14

15 7. Defendant Felipe Amezcuita was, at all times relevant to the
16 present matter, a police officer with the Tempe Police Department. He is
17 named herein in both his official and individual capacities, as such terms are
18 used within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
19

20 8. At all times relevant to the present matter, Defendant Amezcuita
21 was acting within the scope and course of his employment as a Tempe police
22 officer. He was a state actor as that term is used within the Civil Rights Act of
23 1871, 42 U.S.C. § 1983.
24

25 9. Defendant Jake Alexander was, at all times relevant to the
26 present matter, a police officer with the Tempe Police Department. He is
27
28

1 named herein in both his official and individual capacities, as such terms are
2 used within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

3
4 10. At all times relevant to the present matter, Defendant Alexander
5 was acting within the scope and course of his employment as a Tempe police
6 officer. He was a state actor as that term is used within the Civil Rights Act of
7 1871, 42 U.S.C. § 1983.

8
9 11. Defendant Bryan Berman was, at all times relevant to the present
10 matter, a police officer with the Tempe Police Department. He is named
11 herein in both his official and individual capacities, as such terms are used
12 within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

13
14 12. At all times relevant to the present matter, Defendant Berman
15 was acting within the scope and course of his employment as a Tempe police
16 officer. He was a state actor as that term is used within the Civil Rights Act of
17 1871, 42 U.S.C. § 1983.

18
19 13. Defendant Matthew Barker was, at all times relevant to the
20 present matter, a police officer with the Tempe Police Department. He is
21 named herein in both his official and individual capacities, as such terms are
22 used within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

23
24 14. At all times relevant to the present matter, Defendant Barker was
25 acting within the scope and course of his employment as a Tempe police
26 officer. He was a state actor as that term is used within the Civil Rights Act of
27

1 1871, 42 U.S.C. § 1983.

2 15. Defendant Nolan Palmer was, at all times relevant to the present
3 matter, a police officer with the Tempe Police Department. He is named
4 herein in both his official and individual capacities, as such terms are used
5 within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
6

7 16. At all times relevant to the present matter, Defendant Palmer was
8 acting within the scope and course of his employment as a Tempe police
9 officer. He was a state actor as that term is used within the Civil Rights Act of
10 1871, 42 U.S.C. § 1983.
11

12 17. Defendant Kyle Pettengell was, at all times relevant to the present
13 matter, a police officer with the Tempe Police Department. He is named
14 herein in both his official and individual capacities, as such terms are used
15 within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
16

17 18. At all times relevant to the present matter, Defendant Pettengell
18 was acting within the scope and course of his employment as a Tempe police
19 officer. He was a state actor as that term is used within the Civil Rights Act of
20 1871, 42 U.S.C. § 1983.
21

22 19. Defendant Lauren Wallace was, at all times relevant to the
23 present matter, a police officer with the Tempe Police Department. She is
24 named herein in both her official and individual capacities, as such terms are
25 used within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
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28

1 20. At all times relevant to the present matter, Defendant Wallace
2 was acting within the scope and course of her employment as a Tempe police
3 officer. She was a state actor as that term is used within the Civil Rights Act
4 of 1871, 42 U.S.C. § 1983.
5

6 21. Defendant Michael Evans was, at all times relevant to the present
7 matter, a police officer with the Tempe Police Department. He is named
8 herein in both his official and individual capacities, as such terms are used
9 within the jurisprudence of the Civil Rights Act of 1871, 42 U.S.C. § 1983.
10

11 22. At all times relevant to the present matter, Defendant Hayes was
12 acting within the scope and course of his employment as a Tempe police
13 officer. He was a state actor as that term is used within the Civil Rights Act of
14 1871, 42 U.S.C. § 1983.
15

16 JURISDICTION AND VENUE

17 23. This action arises under the Constitution of the United States,
18 particularly the First, Fourth, and Fourteenth Amendments, and under the
19 laws of the United States, particularly the Civil Rights Act, 42 U.S.C. § 1983,
20 and under Arizona law.
21

22 24. This Court has jurisdiction over Plaintiff's federal civil rights
23 claim pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 144.
24

25 25. This Court has supplemental jurisdiction over claims arising
26 under the laws of the State of Arizona pursuant to 28 U.S.C. § 1367(c).
27
28

FACTUAL BACKGROUND

1 33. At approximately 2:30 am, Noah heard a knock at his apartment
2 door. Unsure as to who could be knocking at his door at such a late hour,
3 Noah peered through his front door's peephole to identify who was there. He
4 observed two uniformed Temple Police officers.
5

6 34. Noah opened the door. As Noah was entering the hallway and
7 closing the door behind him he started to greet the officers when instantly, he
8 was confronted by numerous officers, far more than the two he had seen when
9 peering through his peephole.
10

11 35. Upon information and belief, these additional officers included
12 Defendants Hayes, Amezquita, Alexander, Berman, Barker, Palmer,
13 Pettengell, And Wallace.
14

15 36. Without warning or any other verbal communication, one or more
16 of the officers grabbed Noah and wrenched his arms behind his back.
17

18 37. The officers kicked Noah's feet out from beneath him, and threw
19 him onto the ground.
20

21 38. In doing so, Noah struck his head, back and leg on the ground with
22 the combined weight of his own body and the weight of the officer on top of
23 him.
24

25 39. Noah landed approximately twenty feet from his front door.
26 Officers handcuffed Noah and pushed him down into the sidewalk, face first.
27
28

1 40. As Noah laid on the ground, he could hear the other officers direct
2 each guest to leave the apartment "one by one."

3 41. After the guests had left, he could hear the officers joking among
4 themselves, one stating "how much fun" the officers were having.
5

6 42. Although Mr. Frochtzwajg was clearly injured and in pain, the
7 officers made no effort to render aid or obtain medical help to remedy the
8 injuries that they had caused.
9

10 43. Moreover, at no point during this incident did any of the officers
11 express disapproval of the conduct of any other officer, or act in any manner to
12 stop the other officers' unconstitutional and wrongful conduct.
13

14 44. Approximately 30 to 60 minutes later, Mr. Frochtzwajg was
15 released from the handcuffs.
16

17 45. Although subjected to excessive use of force and an arrest, Mr.
18 Frochtzwajg was never charged with any offense of any nature as a result of
19 this incident.
20

21 46. There was no probable cause for either the use of force or arrest of
22 Mr. Frochtzwajg.

23 47. Although Mr. Frochtzwajg had guests in his apartment, it was not
24 a "party." There was no loud music playing. There was no loud conversation.
25 Mr. Frochtzwajg had done nothing to indicate that he presented any threat to
26 the officers.
27
28

1 48. Upon information and belief, Defendants Hayes, Amezquita,
2 Alexander, Berman, Barker, Palmer, Pettengell, And Wallace were all integral
3 participants in the use of force and arrest of Mr. Frochtzwajg, as described
4 above.
5

6 49. Upon further information and belief, these officers were part of an
7 organized "party patrol" organized by the Tempe Police Department to locate
8 and terminate student parties around Arizona State University.
9

10 50. As part of its practices and procedures, however, the party patrol
11 did not simply disrupt parties whose noise, etc., exceeded legal boundaries, or
12 where underaged drinking had been established, but would raid any student
13 social gathering.
14

15 51. Moreover, their tactics in dealing with parties were, as a matter of
16 practice, policy, and/or procedure, heavy handed and needlessly forceful. As
17 evidenced by Mr. Frochtzwajg's case, the Defendants would utilize force where
18 no force was indicated or necessary.
19

20 52. As a direct and proximate result of the Defendants' use of force
21 and arrest of Mr. Frochtzwajg, Mr. Frochtzwajg sustained serious injury.
22 Among other things, Mr. Frochtzwajg suffered multiple abrasions, a closed
23 head injury, pain in his tailbone, and injury to his leg and lower back. The full
24 extent of the physical injuries is not yet known. Mr. Frochtzwajg incurred
25
26
27
28

1 medical bills as a result of the Defendants' conduct, and will continue to incur
2 such expenses into the future.

3
4 53. Mr. Frochtzwajg also sustained other economic damages and loss
5 of enjoyment of life. As noted above, Mr. Frochtzwajg was a professional
6 golfer. He was about to attend the PGA's qualifying school. However, as a
7 result of his injuries caused by the incident at issue, he has had to delay his
8 attendance at the school, and it is not known if his golf game will ever return
9 to its professional form. Golf was Mr. Frochtzwajg's first love, and the injuries
10 have caused significant loss of enjoyment of life.

11
12
13 54. Mr. Frochtzwajg has also incurred emotional distress damages,
14 including psychological trauma and humiliation.

15
16 55. Exercising his right to free speech and to petition the government
17 to redress his grievances, Mr. Frochtzwajg provided a statement to the Tempe
18 Police Department's internal affairs unit.

19
20 56. Rather than investigate his claims, however, the Tempe Police
21 Department, in an internal affairs investigation headed by, upon information
22 and belief, Defendant Michael Evans, began a campaign of harassment
23 against Mr. Frochtzwajg.

24
25 57. Among other things, the Tempe Police Department and Defendant
26 Evans accessed Mr. Frochtzwajg's Facebook page, and began contacting Mr.

1 Frochtzwajg's friends and acquaintances, asking them numerous personal and
2 embarrassing questions about Mr. Frochtzwajg.

3
4 58. The apparent intent of Tempe Police Department and Defendant
5 Evans was to place Mr. Frochtzwajg in a false light before his friends, family
6 and acquaintances, causing further humiliation and embarrassment.

7
8 **CLAIMS FOR RELIEF**

9 **Count One**

10 **Civil Right Act of 1871, 42 U.S.C. § 1983**

11 **(As Against Defendants City of Tempe, Hayes,**
12 **Amezquita, Alexander, Berman, Barker,**
13 **Palmer, Pettengell, and Wallace)**

14 59. The foregoing paragraphs are incorporated herein.

15 60. The conduct of Hayes, Amezquita, Alexander, Berman, Barker,
16 Palmer, Pettengell, and Wallace (the "Arresting Defendants") constituted a
17 violation of Plaintiff Noah Frochtzwajg's rights under the Fourth and
18 Fourteenth Amendments to the United States Constitution, including the use
19 of excessive and unreasonable force and a wrongful arrest and seizure.
20

21 61. Mr. Frochtzwajg did not resist the police officers in any manner,
22 was not armed and, as such, there was no need for the use of any force.
23 Alternately, even if some minimal amount of force was reasonable under the
24 circumstances, the amount of force utilized was grossly disproportionate to any
25 real or perceived threat.
26
27
28

1 62. The Arresting Defendants also arrested Mr. Frochtzwajg. They
2 did so without probable cause to believe he had committed any offense, and no
3 reasonable officer would have believed that probable cause existed for his
4 arrest.
5

6 63. Each of the foregoing Defendants was an integral participant in
7 the unconstitutional conduct as alleged herein, and/or acted in concert with
8 each other to violate Mr. Frochtzwajg's constitutional rights.
9

10 64. Further, upon information and belief, the unconstitutional conduct
11 of the Arresting Defendants as alleged herein was part of policies, practices, or
12 procedures of Defendant City of Tempe, Arizona, including but not limited to
13 (1) using excessive and unreasonable force when approaching student parties,
14 even where there is no need for force and the students offer no resistance of
15 any kind to the officers, and (2) arresting, without probable cause, students at
16 social gatherings solely because of their presence at the gathering, rather than
17 on the basis of individualized suspicion of wrongdoing.
18
19

20 65. As a direct and proximate result of the Arresting Defendants
21 breach of Mr. Frochtzwajg's Fourth and Fourteenth Amendment rights, he
22 sustained damage, including physical injury, medical expenses, other economic
23 losses, emotional distress, and loss of enjoyment of life.
24
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28

Count Two

Civil Rights Act of 1871, 42 U.S.C. § 1983

(As Against Defendants City of Tempe and Evans)

66. The foregoing paragraphs are incorporated herein.

67. As permitted – and encouraged – by the First Amendment to the United States Constitution, Plaintiff Noah Frochtzwajg reported the wrongful conduct of the Arresting Defendants to authorities at the Tempe Police Department.

68. Defendants City of Tempe and Michael Evans who, upon information and belief, is a member of the Tempe Police Department's internal affairs unit, began a campaign of harassment against Mr. Frochtzwajg.

69. Among other things, it appears that Defendant Evans accessed Mr. Frochtzwajg's Facebook page, identified his Facebook "friends" (which includes family, friends, acquaintances, and school and business associates), and began contacting these individuals, asking embarrassing and irrelevant questions about Mr. Frochtzwajg's background.

70. These questions included leading questions intended to cast aspersion upon Mr. Frochtzwajg, and questions about any prior misconduct by Mr. Frochtzwajg.

71. The conduct of Defendant Evans to seek to embarrass and humiliate Mr. Frochtzwajg, rather than investigate the wrongful actions of the

1 Arresting Defendants, violated Mr. Frochtz wajg's rights to free speech and to
2 petition the government for redress, as guaranteed by the First and
3 Fourteenth Amendments to the United States Constitution.
4

5 72. Moreover, the conduct by Defendant Evans is, upon information
6 and belief, consistent with the policies, practices, and procedures of Defendant
7 City of Tempe to discourage persons exercising their rights under the First
8 Amendment by engaging in retaliatory acts against those who exercise such
9 rights.
10

11 73. The acts of the Defendant City of Tempe also constitutes
12 ratification of the wrongful acts of the Arresting Defendants (as well as that of
13 Defendant Evans), in further violation of the First, Fourth, and Fourteenth
14 Amendments to the United States Constitution.
15

16 74. As a direct and proximate result of Defendants City of Tempe's
17 and Evans' breach of Mr. Frochtz wajg's First and Fourteenth Amendment
18 rights, he sustained damage, including but not limited to embarrassment,
19 humiliation, emotional distress, and loss of enjoyment of life.
20
21

22 Count Three

23 Assault and Battery

24 (As Against The Arresting Defendants and Defendant City of 25 Tempe)

26 75. The foregoing paragraphs are incorporated herein.
27

28 76. The Arresting Defendants' conduct constituted a common law

1 assault and battery upon Plaintiff Noah Frochtzwajg.

2 77. Defendant City of Tempe is vicarious liable for the conduct of the
3 Arresting Defendants under the doctrine of *respondeat superior*.
4

5 78. As a direct and proximate result of the Arresting Defendants'
6 assault and battery of Mr. Frochtzwajg, he sustained damage, including
7 physical injury, medical expenses, other economic losses, emotional distress,
8 and loss of enjoyment of life.
9

10 **Count Four**

11 **Negligence**

12 **(As Against The Arresting Defendants and Defendant City of**
13 **Tempe)**
14

15 79. The foregoing paragraphs are incorporated herein.

16 80. The Arresting Defendants breached their duty of care towards Mr.
17 Frochtzwajg by arresting in an unreasonable manner that resulted in needless
18 injury to Mr. Frochtzwajg, and by failing to render aid after Mr. Frochtzwajg
19 had been injured.
20

21 81. Defendant City of Tempe is vicarious liable for the conduct of the
22 Arresting Defendants under the doctrine of *respondeat superior*.
23

24 82. As a direct and proximate result of the Arresting Defendants'
25 breach of their duty of care to Mr. Frochtzwajg, he sustained damage,
26 including physical injury, medical expenses, other economic losses, emotional
27 distress, and loss of enjoyment of life.
28

Count Five

False Arrest and Imprisonment

(As Against The Arresting Defendants and Defendant City of Tempe)

83. The foregoing paragraphs are incorporated herein.

84. The Arresting Defendants wrongfully arrested and imprisoned Mr. Frochtzwajg.

85. Defendant City of Tempe is vicarious liable for the conduct of the Arresting Defendants under the doctrine of *respondeat superior*.

86. As a direct and proximate result of the Arresting Defendants' breach of their duty of care to Mr. Frochtzwajg, he sustained damage, including physical injury, medical expenses, other economic losses, emotional distress, and loss of enjoyment of life.

Count Six

Intentional Infliction of Emotional Distress

(As Against All Defendants)

87. The foregoing paragraphs are incorporated herein.

88. The Defendants' conduct as alleged herein was outrageous. It was done without regard for the emotional distress that would inevitably occur from such strong-handed and retaliatory conduct.

89. Defendant City of Tempe is vicarious liable for the conduct of the individual Defendants under the doctrine of *respondeat superior*.

1 Frochtzwajg's privacy by, among other things, placing him in a false light
2 before his family, friends, acquaintances, and associates, and by interfering
3 with his private and personal relationships.
4

5 97. Defendant City of Tempe is vicarious liable for the conduct of
6 Defendant Evans under the doctrine of *respondeat superior*.
7

8 98. As a direct and proximate result of Defendant Evans' wrongful
9 invasion of Mr. Frochtzwajg's privacy, he sustained damage, including
10 economic losses, emotional distress, and loss of enjoyment of life.
11

12 Count Nine

13 Breach of the Arizona Constitution, Art. 2, §§ 4, 5, 6, 8

14 (As Against All Defendants)

15 99. The foregoing paragraphs are incorporated herein.
16

17 100. The Defendants' conduct as alleged herein violated Mr.
18 Frochtzwajg's rights under Article 2, Sections 4 (due process), 5 (right of
19 petition and assembly), 6 (freedom of speech and press), and 8 (right to
20 privacy).
21

22 101. Defendant City of Tempe is vicarious liable for the conduct of the
23 Arresting Defendants under the doctrine of *respondeat superior*.
24

25 102. As a direct and proximate result of the Defendants' breach of Mr.
26 Frochtzwajg's rights under the Arizona Constitution, he sustained damage,
27 including physical injury, medical expenses, other economic losses, emotional
28

1 distress, and loss of enjoyment of life.

2 **PRAYER FOR RELIEF**

3
4 Plaintiff Noah Frochtzwajg prays for judgment against Defendants and
5 each of them as follows:

- 6 A. For special damages;
- 7
- 8 B. For general and compensatory damages, including economic
9 losses, emotional distress, and loss of enjoyment of life;
- 10 C. For exemplary damages to the extent permitted by law;
- 11 D. For attorney's fees and expenses pursuant to 42 U.S.C. § 1988;
- 12
- 13 E. For pre- and post-judgment interest to the extent permitted by
14 law;
- 15 F. For taxable costs as may be allowed; and
- 16
- 17 G. For such other relief as the Court deems just and proper.

18 **JURY DEMAND**

19 Plaintiff respectfully requests a trial by jury on all issues in this matter
20 triable to a jury.

21
22 **DATED** this 23rd day of May, 2011.

23
24 **ROBBINS & CURTIN, p.l.l.c.**

25 By: /s/ Joel B. Robbins
26 Joel B. Robbins
27 Anne E. Findling
28 *Attorney for Plaintiffs*